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line where the same was built to connect its tracks with an elevated railroad. The *Lewis* and *Muhlker* cases were held inapplicable on the ground that here the defendant had obtained title to its right of way before the street was laid out and subsequent purchasers of abutting lands took subject to its vested rights. The obvious conclusion would seem to be that the principles of the *Story* case are not regarded by the Court with favor and their application will be closely restricted. They were so distinguished and excluded in the *Fries* case (1901) 169 N. Y. 270 and again in *Lauer v. N. Y.* (1904) 180 N. Y. 87. The doctrine of the *Story* case was still further narrowed by declaring the erection by the city of a fifty-foot viaduct over the street for the purpose of facilitating traffic to be analogous to the case of changing the grade on a street, which in New York gives rise to no cause of action. *Radcliffs' Executors v. The Mayor* (1850) 4 N. Y. 195. See 5 COLUMBIA LAW REVIEW, 250.

NATURE OF RIGHTS IN A DEAD BODY.—The question of the right in a dead body has recently been considered by the Supreme Court of Georgia. A widow was allowed substantial damages for the mutilation of the dead body of her husband, caused by the negligence of the defendant carrier, on the theory of an infringement of a quasi-property right. *L. & N. Ry. Co. v. Wilson* (1905), 51 S. E. 24. The discussion of the nature of this right is of comparatively recent origin. In England such questions were formerly under the exclusive jurisdiction of the Ecclesiastical Courts. This accounts for the lack of ancient authority. Early *dicta* deny any property right in a corpse at common law. *Haynes's Case* (1613), 12 Coke 113; and this is now the law in England. *Regina v. Sharpe* (1857), Dea. & Bell. C. C. 160; *Williams v. Williams* (1882), 20 Ch. Div. 659. The American courts also have refused to recognize a purely proprietary right. *Griffith v. C. C. & A. Ry. Co.* (1884), 28 S. C. 25. Thus a man may not dispose of his own body by will, *Enos v. Snyder* (1900), 131 Cal. 68; nor bring replevin for another's body. *Keyes v. Konkel* (1899), 119 Mich. 550. Yet our courts, with a single exception, have everywhere recognized the existence of some right in the wife or nearest relative to an undisturbed possession of the body until burial. Various theories for this right have been advanced. The indefinite and unsatisfactory term of a quasi-property right is suggested. *Pierce v. Cemetery* (1872), 10 R. I. 227. Another court, disregarding the nature of the right, has given damages as for mental suffering alone. *Hale v. Bonner* (1891), 82 Tex. 33. A more satisfactory theory is found in a decision of the New York court: since burial is a duty required by the law, it will be protected by the law. *Foley v. Phelps* (1896), 1 App. Div. 551. The idea of any property right is rejected. This recognition of a purely personal right is not anomalous. It would belong to that class of rights such as a married woman's right to her husband's *consortium*, or the right to one's fair name and reputation, the infringement of which is an injury neither to property nor to the physical person.

The principal injury consists in outraged feelings, and to the Texas court, this alone is sufficient ground for awarding damages. But ac-

according to the weight of authority, damages for mental suffering alone are not recoverable. Sutherland, *Damages*, 3rd Ed., § 977. The New York case proceeds on the theory that a legal right has been infringed for which the plaintiff is entitled to nominal damages at least. He may then set up his injured feelings as a ground for further damages. *Larson v. Chase* (1891), 47 Minn. 307. Compensatory damages will be awarded where it can be shown that the mental suffering was the direct and proximate result of the legal wrong. *Koerber v. Patek* (1905), 102 N. W. 40. While money cannot be adequate compensation for the mutilation of a dead body, an award of monetary damages is the only remedy under the circumstances that the law can give. And by analogy to that class of torts suggested above, there is ample authority for awarding substantial damages.